

379664

UNITED STATES OF AMERICA
OFFICE OF HEARINGS
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION
FISCS

2005 DEC 10 A.D. 33

IN THE MATTER OF

THOMAS M. TRIBBETT, JR.

*
*
*
*
*
*

CP05EA0002

DMS No, FAA-2005-20324 -60

Judge Yoder

AGENCY'S RESPONSE TO SHOW CAUSE ORDER

COMES NOW the Agency by and through its designated representative the Regional Counsel for the Eastern Region and her designated and authorized agents, and responds to the Show Cause Order of the Chief Administrative Law Judge served December 2, 2005 (the "Show Cause Order").

In the Show Cause Order, the Chief Administrative Law Judge ordered the Complainant to "serve, file, and deliver to the Judge an explanation of the change in the service addresses used for the Final Notice of Proposed Civil Penalty Motion, on the one hand, and the Complaint and Motion, on the other hand." Show Cause Order at 6-7.

Complainant served the Final Notice of Proposed Civil Penalty on Respondent using the address: 8814 Hunting Lane, Apt. 101, Laurel, MD. This address was obtained from the Incident Report provided by America West.¹ See Exhibit A. While the Final Notice of Proposed Civil Penalty that was served using the Hunting Lane address was returned

¹ Complainant had previously used the Hunting Lane address to serve the Notice of Proposed Civil Penalty by certified mail. When the Notice of Proposed Civil Penalty served by certified mail was returned marked "unclaimed" Complainant re-served it by First Class mail. The Notice of Proposed Civil Penalty served by First Class mail was not returned to this office. See Exhibit B.

marked "unclaimed," see Exhibit C, it was resent to the Hunting Lane address by regular, first class mail and was not returned to this office. Exhibit B.

When Respondent filed his request for a hearing, he included in the Agency's copy of the request a letter indicating that he had recently changed addresses. See Exhibit D. Complainant did not provide a current address for service in his letter. Thus, Respondent left Complainant with a dilemma in serving the Complaint. Respondent had informed Complainant that the Hunting Lane address was no longer valid for service, but he had not provided Complainant with another address for service. While Respondent did not provide an updated address for service, the envelope in which Respondent's request for hearing and letter were enclosed had a clearly legible return address, the Park Avenue address. See Exhibit E. Because a return address is used for the purpose of returning to the sender, mail that cannot be delivered to the addressee, a reasonable assumption from a return address is that the sender is able to accept mail at the return address. In the absence of any other address for Respondent, Complainant served the Complaint on Respondent at the Park Avenue address, which appeared, under the circumstances, to be the most recent address for Respondent at which he could receive mail.

WHEREFORE, the Complainant respectfully submits that it has sufficiently explained the reason for the change in service address and requests that the Chief Administrative Law Judge find that service of the Complaint was valid.

Respectfully submitted,

Loretta E. Alkalay
Regional Counsel

By: Mary M. McCarthy
Mary M. McCarthy
Attorney
Office of Regional Counsel
One Aviation Plaza, Room 561
Jamaica, NY 11434
718-553-3259
718-995-5699 (fax)

Date: December 12, 2005

CERTIFICATE OF SERVICE

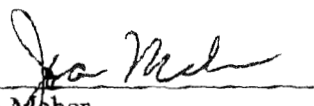
I hereby certify that on this date a copy of the Agency's Response to Show Cause Order was served by Certified Mail—Return Receipt Requested on the following:

Honorable Ronnie A. Yoder
Chief Administrative Law Judge
Office of Hearings, M-20
Room 5411
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20591

Thomas M. Tribbett, Jr.
c/o Watts
931 Park Avenue
Laurel, MD 20707

Thomas M. Tribbett, Jr.
8814 Hunting Lane, Apt. 101
Laurel, MD 20708

Hearing Docket
Federal Aviation Administration
800 Independence Ave, SW
Washington, D.C. 20591
Attn: Hearing Docket Clerk, AGC-430
Wilbur Wright Building—Room 2014


Joan Maher
Management & Program Analyst

Dated: 12/12/85

Watts
931 Park Ave
Laurel, MD 20707

Federal Aviation Administration
Eastern Region
Office of the Regional Counsel, AEA-7
1 Aviation Plaza
Jamaica, NY 11434

1143414603

1143414603

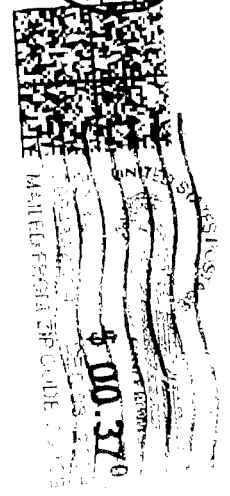
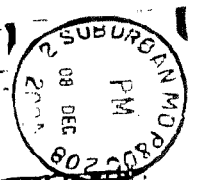


EXHIBIT
E

Melody B / AG-SAF

SMOKING BAN VIOLATION FORM

OCT 25 2005
INFLIGHT SERVICES

EACH crewmember **MUST SIGN** report on back whether or not the event was witnessed.

A. MANDATORY INFORMATION

Employee: CECILIA OLDRÉ ID Number: C 6691 Date of Event: 21 OCT 05
Flight Number: 776 A/C Tail Number: 624 Departure City: LAS Arrival City: BWI Diversion City: X

B. SMOKING VIOLATION INFORMATION

☒ **WRITTEN WARNING NOTICE MUST BE PRESENTED WHEN A PASSENGER VIOLATES THE FOLLOWING SMOKING REGULATIONS.**
Check the appropriate box:

☐ PASSENGER CONTINUED TO SMOKE

☐ TAMPERED WITH SMOKE DETECTOR

☒ SMOKED IN LAVATORY

☐ CAUSED A SMOKING RELATED DISTURBANCE

Notify captain prior to presenting passenger with the written warning (E) Notice. Obtain (C) Passenger Identification and (D) Witness Information if possible. Complete (A) Mandatory Information and (B) Smoking Violation Information. Answer the questions below and complete (F) Event Description.

If passenger refuses to provide identification and/or causes a disturbance, request authorities to meet the flight. Complete the Smoking Ban Violation Form and Passenger Misconduct Form as applicable.

Please answer the questions below by checking the appropriate box.					
YES	NO	Was the aircraft on the ground?	YES	NO	Was the passenger actually observed smoking?
<input checked="" type="radio"/>	<input type="radio"/>	Were all non-smoking announcements made per the IOM?	YES	<input checked="" type="radio"/>	Was the lavatory smoke detector activated?
<input checked="" type="radio"/>	<input type="radio"/>	Was the No Smoking sign on?	YES	<input checked="" type="radio"/>	Was the smoke detector tampered with?
<input checked="" type="radio"/>	<input type="radio"/>	Were the No Smoking placards in place both inside and outside the lavatory?	<input checked="" type="radio"/>	<input type="radio"/>	Was the passenger given a verbal warning?
<input checked="" type="radio"/>	<input type="radio"/>	Was the aircraft met by law enforcement?	<input checked="" type="radio"/>	<input type="radio"/>	Was the passenger given the written warning notice?

C. PASSENGER IDENTIFICATION

☒ **ID IS REQUIRED FOR SMOKING BAN VIOLATIONS. IF A PASSENGER REFUSES TO PROVIDE IDENTIFICATION OR DOES NOT HAVE ID, REQUEST THAT THE AUTHORITIES WHO MEET THE AIRCRAFT OBTAIN THE INFORMATION.**

Passenger Name (Print): THOMAS M. TRIBBITT, JR 98
Address: 8814 HUNTING LANE Apt # 101 City LAUREL, RG State MARYLAND Zip Code 20708
Phone #: 240-472-5295 Drivers License #: T613-792-603-962 MARYLAND

D. WITNESS INFORMATION

Witness Name (Print): Jennifer Faulkner PWA # C6896 Phone #: 602 510 1024
Address: 1413 E. Bellevue St Apt # 8 City Scottsdale State AZ Zip Code 85257
Witness Name (Print): _____ Phone #: _____
Address: _____ Apt # _____ City _____ State _____

EXHIBIT

A



FAA NOTIFICATION TEMPLATE

"Completed Investigation Report"

MANAGER, InFlight Standards/DESIGNEE

Mail Completed DOCUMENT To:

Christine Jordan

FAA FSDO

2800 North 44th Street

Suite 450

Phoenix, AZ 85008-1561

Incident (X appropriate event)	Today's Date	City Palrs	Event Date	Flight #	Reporting Employee #
Smoking Ban Violation <input checked="" type="checkbox"/> X OR Passenger Misconduct	11/3/2003	LAS-BWI	October 21, 2003	776	Cecilia Oldre C6691

Passenger Information:

Name: Thomas M. Tribbitt

Address: 8814 Hunting Lane Apt 101 Laurel MD 20708

Phone: 204-472-5295

Synopsis of incident: Pax admitted smoking in lav, thought he could since there were ashtrays in lav.

Attachments:

NOTE: Flight Attendant reports to follow via US Mail:

YES

NO

☒ **X**

No unauthorized changes or retying of this document is permitted. This document is a controlled document approved by InFlight Regulatory Compliance PHX and is part of the airline's regulatory oversight program to ensure compliance with FAR 121.575.



U.S. Department
of Transportation

Federal Aviation
Administration

JUN 8 2004

Eastern Region
Regional Counsel
Telephone: 718 553-3259
Facsimile: (718) 995-5699

1 Aviation Plaza
Room 561
Jamaica, NY 11434

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Thomas M. Tribbett, Jr.
8814 Hunting Lane Apt. 101
Laurel, MD 20708

Docket No. 2004EA070030

NOTICE OF PROPOSED CIVIL PENALTY

TAKE NOTICE, that this office has received an investigative report from which it appears that you violated the Federal Aviation Regulation(s) by reason of the following:

1. On or about October 21, 2003, you were on board an America West flight, flight 776 from Las Vegas, Nevada to Baltimore, Maryland.
2. During the course of the above-described flight, you smoked while a "No Smoking" sign was lighted and/or while "No Smoking" placards were posted.
3. Specifically, you smoked in the First Class lavatory.
4. During the course of the above-described flight, you failed to comply with the no smoking instructions given by the crewmembers.
5. Specifically, you failed to comply with the announcements that smoking was prohibited on the flight.

By reason of the foregoing, you violated the following section(s) of the Federal Aviation Regulations:

1. Section 121.317(g), which states that no person may smoke while a "No Smoking" sign is lighted or if "No Smoking" placards are posted.
2. Section 121.317(h), which states that no person may smoke in an airplane lavatory.

EXHIBIT

B

NO. 4/88 P. 9/19

F. A. A. REGIONAL COUNSEL, AEA-7

DEC. 14. 2005 3:39PM

3. Section 121.317(k), which states that each passenger shall comply with instructions given to him or her by crewmembers regarding compliance with paragraphs (f), (g), and (h) of this section.

In accordance with 49 U.S.C. §46301(a)(1), you are liable for a civil penalty not to exceed \$1,100 for each violation of the regulation(s). After reviewing our investigative file, we propose to assess a civil penalty in the amount of \$1,100 for this violation.

Enclosed is information on your options in responding to this Notice. The options include participating in an informal conference with an FAA attorney and submitting information to the FAA for consideration. You must submit, in writing, your choice of the alternatives explained on the enclosed information form, on or before thirty (30) days after you receive this Notice. If you fail to submit your choice within that time, you will have no further right to participate in the informal procedures.

Loretta E. Alkalay
Regional Counsel

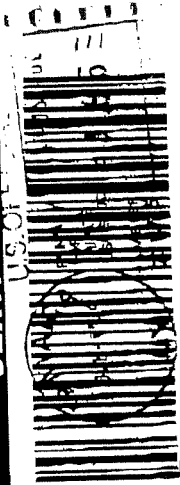
By: /s/ 3M
Mary M. McCarthy
Attorney

Enclosures

Information Sheet
Reply Form
Subpart G of 14 C.F.R.
Informal Conference Location List

cc: AEA-230A/Baltimore FSDO

CERTIFIED MAIL



2004 JUL 21 0004 3122 8424

RETURNED TO
SENDER

Federal Aviation Administration
Eastern Region
Office of the Regional Counsel
1 Aviation Plaza
Jamaica, NY 11434
AEA-7 MAM

UNCLAIMED

NAME Wes
1st Notice 6/17/04
2nd Notice 6/17/04
Return 6/25/04



U.S. Department
of Transportation

Federal Aviation
Administration

OCT 26 2004

Eastern Region
Regional Counsel
Telephone: 718 553-3259
Facsimile: (718) 995-5899

1 Aviation Plaza
Room 561
Jamaica, NY 11434

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Thomas M. Tribbett, Jr.
8814 Hunting Lane Apt. 101
Laurel, MD 20708

Docket No. 2004EA070030

FINAL NOTICE OF PROPOSED CIVIL PENALTY

TAKE NOTICE, that on June 8, 2004, this office mailed to you a Notice of Proposed Civil Penalty. Thirty days have passed and we have not received a response from you. This office has received an investigative report from which it appears that you violated the Federal Aviation Regulation(s) by reason of the following:

1. On or about October 21, 2003, you were on board an America West flight, flight 776 from Las Vegas, Nevada to Baltimore, Maryland.
2. During the course of the above-described flight, you smoked while a "No Smoking" sign was lighted and/or while "No Smoking" placards were posted.
3. Specifically, you smoked in the First Class lavatory.
4. During the course of the above-described flight, you failed to comply with the no smoking instructions given by the crewmembers.
5. Specifically, you failed to comply with the announcements that smoking was prohibited on the flight.

By reason of the foregoing, you violated the following section(s) of the Federal Aviation Regulations:

EXHIBIT

C

1. Section 121.317(g), which states that no person may smoke while a "No Smoking" sign is lighted or if "No Smoking" placards are posted.
2. Section 121.317(h), which states that no person may smoke in an airplane lavatory.
3. Section 121.317(k), which states that each passenger shall comply with instructions given to him or her by crewmembers regarding compliance with paragraphs (f), (g), and (h) of this section.

In accordance with 49 U.S.C. §46301(a)(1), you are liable for a civil penalty not to exceed \$1,100 for each violation of the regulations. After reviewing our investigative file, we propose to assess a civil penalty in the amount of \$1,100 for this violation.

Unless you mail or personally deliver, in writing, your request for a hearing in this matter, on or before fifteen (15) days after you receive this Final Notice, we will issue an Order Assessing Civil Penalty and you will have no further right to a hearing. If you do not submit a written request for a hearing, you must pay the proposed civil penalty.

Your request for a hearing must be sent to the Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, S.W., Room 924A, Washington, D.C. 20591, Attention: Hearing Docket Clerk, and a copy must be sent to the undersigned FAA attorney. Your request must be dated and signed, in accordance with Section 13.16 of the Federal Aviation Regulations, sent to you with the Notice of Proposed Civil Penalty (14 C.F.R. 13.16).

You may pay the proposed penalty by submitting a certified check or money order payable to the "Federal Aviation Administration," to the undersigned.

In the alternative, you may pay your civil penalty with a credit card over the Internet. To pay electronically, visit the web site at <http://diy.dot.gov/fea.htm>

and click on "Civil Fines and Penalty Payments" which will bring you to the "FAA Civil Penalty Payments Eastern Region" page. You must then complete the requested information and click "submit" to pay by credit card.

Loretta E. Alkalay
Regional Counsel

By: SM/3M
Mary M. McCarthy
Attorney

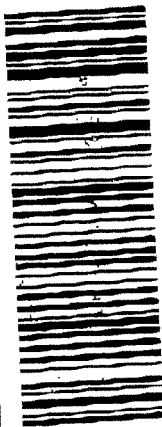
Enclosure (1)

Option Selection Form

cc: AEA-230A/Baltimore FSDO

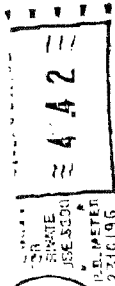
CERTIFIED MAIL

Federal Aviation Administration
Eastern Region
Office of the Regional Counsel
1 Aviation Plaza
Jamaica, NY 11434
AEA-7 MAM



7000 0105 5000 4575 2410 2002

211 Woodh. Dr.
Glen Summit Md 21061



Name _____
1st Notice _____
2nd Notice _____
Return _____

NOV 2 2004

PLACE STICKER IN ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS TO BE MAILED

SENDER: COMPLETE THIS SECTION

- ☐ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☐ Print your name and address on the reverse so that we can return the card to you.
- ☐ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Thomas M. Jicklett, Jr.
8814 Hunting Lane
Apt 101
Darnest, MD 20708

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☐ Agent ☐ Addressee
X

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

2. An 7002 2410 0005 5134 9676
PS Form 3811, August 2001 Domestic Return Receipt

OCT 26 2004

102595-02-1A-1540

11/23/04
sent first class
mail
J.M.

12/7/04

To whom it may concern,
I am writing this letter in regards to the notice that I have received from you. This is the first one I have received due to an address change. I am currently in an unstable financial time in my life and cannot afford to pay \$1100. In fines. I do not currently have a place to live so I cannot tell you a direct address for me at this time, if at all possible could things be postponed until I get things back in order, a few months from now. Thank you for your cooperation as this matter is resolved.

Thomas Tribbitt

Thanks,
Thomas Tribbitt
Docket # 2004EA070030

DEC 10 2004

EXHIBIT

D

Regional Counsel for the Eastern Region Date _____
Federal Aviation Administration
1 Aviation Plaza
Room 561
Jamaica, NY 11434

Thomas M. Jr. Tribbett - 2004EA070030
Subject: Final Notice of Proposed Civil Penalty
Response Attachment

In reply to your Final Notice of Proposed Civil Penalty, I elect to proceed as indicated by my check mark beside the numbered paragraph below:

1. ☐ I hereby submit the amount of the proposed civil penalty with the understanding that an Order Assessing Civil Penalty will be issued in that amount.

2. ☒ I hereby request a formal hearing in accordance with Section 13.16 of the Federal Aviation Regulations.

By sending this form to the Federal Aviation Administration, Eastern Region, I also hereby certify that a copy of this form has been filed with the Hearing Docket Clerk (Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, S.W., Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk).

**** Please note that you will not be entitled to a hearing if you file this form with the Federal Aviation Administration, Eastern Region, WITHOUT having filed this form or a written request for a hearing with the HEARING DOCKET CLERK.**

MY ATTORNEY/REPRESENTATIVE

Thomas Tribbett
Signature

Address: _____
Home Phone No. _____
Business Phone No. _____

Name: _____
Firm: _____
Address: _____
Phone No. _____

PRIVACY ACT NOTICE

This notice is provided in accordance with Section (e)(3) of the Privacy Act, 5 U.S.C. §552a(e)(3), and concerns the information requested in the letter or form with which this Notice is enclosed.

- A. Authority. This information is solicited pursuant to 49 U.S.C. 1101 et seq., and regulations issued thereunder codified in Part 13 of Title 14 of the Code of Federal Regulations. Submission of the telephone number is voluntary. The request for information is intended to provide you with an opportunity to participate in the investigation.
- B. Principal Purpose. The requested information is intended to assist us in contacting you regarding this enforcement case.
- C. Routine Uses. Records from this system of records may be disclosed in accordance with the routine uses as they appear in System of Records No. DOT/FAA 847 as published from time to time in the Federal Register.
- D. Effect of Failure to Respond. If you do not provide the requested information, there may be delay in contacting you regarding this enforcement case.

DEC 10 2004